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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR VEGA ROMERO,

Defendant and Appellant.

B220664

(Los Angeles County
Super. Ct. No. NA043350)

APPEAL from an order of the Superior Court of Los Angeles County.

Tomson T. Ong, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Susan Sullivan Pithey and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Oscar Vega Romero appeals from the order pursuant to Penal Code section 1608¹ revoking his outpatient status and requiring him to return to a state hospital. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Romero's Commitment, His Placement in Outpatient Treatment and the Progress Reports from the Outpatient Treatment Program*

An amended information, dated December 12, 2000, charged Romero with eight counts: (1) carjacking (§ 215, subd. (a)); (2) attempted kidnapping during the commission of a carjacking (§§ 664, 209.5, subd. (a)); (3) four counts of attempted carjacking (§§ 664, 215, subd. (a)); (4) assault with a deadly weapon (§ 245, subd. (a)); and (5) driving in willful or wanton disregard for the safety of persons or property while fleeing or attempting to elude a pursuing peace officer (Veh. Code, § 2800.2, subd. (a)). The information specially alleged with respect to the charges of carjacking, attempted kidnapping during the commission of a carjacking and attempted carjacking that Romero personally had used a dangerous or deadly weapon—a knife—in committing the offenses (§ 12022, subd. (b)(1)).²

A jury convicted Romero of five counts—carjacking; attempted kidnapping during the commission of a carjacking; attempted carjacking; assault with a deadly weapon; and driving in willful or wanton disregard for the safety of persons or property while fleeing or attempting to elude a pursuing peace officer—and found true the special allegation pursuant to section 12022, subdivision (b)(1). On March 25, 2002, the trial court found that Romero was not sane within the meaning of section 1026 at the time of the offenses and directed that he be confined in a state hospital until such time as his sanity is restored, not to exceed a commitment of 14 years 6 months.

On October 16, 2006, the trial court ordered an outpatient commitment for Romero, who began treatment in the Gateways Satellite Conditional Release Program.

¹ Statutory references are to the Penal Code unless otherwise noted.

² Although a second amended information was filed on March 20, 2001, it was not found in the court file and thus is not part of the appellate record.

An April 2, 2007 progress report indicated that Romero had been diagnosed with alcohol-induced psychotic disorder with delusions and polysubstance abuse. After his initial placement, Romero was transferred to a new residence on February 27, 2007, which was “a progressive half step to community board and care.” According to the report, “Romero has been an active participant in group and individual therapy. He is intelligent and grasps therapeutic concepts, albeit he doesn’t often apply the concepts to himself.” Romero “can continue to be safely and effectively treated in the community, but continues to require the structure and support provided by the Gateways Satellite Program and we recommend continued placement at this time.”

A later progress report, dated October 1, 2007, indicated that Romero was progressing in his treatment and had been transferred to a third facility on May 30, 2007, furthering “progressive steps into the community.” “Romero has maintained overall a positive program. He has demonstrated motivation in treatment in both individual and group settings. His major challenge has been to develop the ability to be self critical particularly with issues and traits that may contribute to his vulnerability to binge use of alcohol, e.g. his being reactive to perceived slights or put downs, and developing a deeper understanding of the twelve steps [through his participation in Alcoholics and Narcotics Anonymous] and his own philosophy in his book [on recovery], as the[y] relate to himself.” “Mr. Romero will continue to benefit from treatment at Gateways Satellite. It is also believed that he does not present a danger to himself or others and can be safely and effectively treated in the community while under the care and supervision of our outpatient treatment program.”

A May 1, 2008 progress report indicated that Romero had been at his current placement since January 15, 2008, “has had difficulty adjusting there, and is now looking for another board and care. It was reported by the manager that he became verbally aggressive with a female night staff member while she was making her rounds. He also missed two scheduled appointments by his Home Visit Counselor. Mr. Romero denied having acted inappropriately, and said he believed the facility was retaliating against him for complaining about conditions. He was reminded that he is expected to act with

respect to all employees, and is required to adhere to the curfew and sign-out requirements. The board and care has reported that his behavior has improved considerably.”

The report further explained, “At his introductory meeting with [his current] treatment team, Mr. Romero stated he found [his placement] to be ‘heavy’ and a setback for him. He said he admits to having a mental illness, using the analogy of a sleeping animal inside of him. He said he tends to get high hopes which can be disappointed. He added that it is pitiful how others are treated at his board and care and that he wants to move because of unclean conditions. [¶] Mr. Romero can present as manipulative by complaining about his lack of freedom and how the program imposes restrictions on him or is not supportive of him. He expresses great disappointment when limits are established, and he insists he does not require external supervision of his behavior. Although he has been informed that reasonable requests for visits to family and friends can be approved, he has been reticent about disclosing his relationships with them, and hesitated about permitting staff to make collateral contacts because of his embarrassment about being in a conditional release program. [¶] Despite his professed disappointments, Mr. Romero has been courteous and appropriate with staff and has complied with program requirements. During the coming quarter, the focus of treatment will be on helping him find and accept another board and care, and to assist him to manage his expectations about his progress in the program. He has never fundamentally accepted that he belongs in a forensic mental health treatment program, and needs to understand how he can benefit from the treatment provided.”

2. *Romero’s Application for Restoration of Sanity, the Outpatient Treatment Program’s Recommendation Against Restoration of Sanity and the Subsequent Progress Reports*

In June 2008, Romero, in pro. per., filed an “Application for Restoration of Sanity and Request for Court or Jury Trial.” Romero stated that, during outpatient treatment, he has “demonstrate[d] [his] ability to manage [his] behavior, maintain [his] sobriety, and become a productive member of society. [¶] During the first part of [his] community

release, [he] had only minor problems in handling [his] anger and daily frustrations. A few conflicts [he] experienced were reported that showed evidence that [he] had minor challenges with this, but [he] was able to work with [his] treatment providers and peers to resolve conflicts. [He] has not behaved in a physically violent or threatening way. [He] take[s] pride in [his] ability to handle frustrating situations and use [his] coping skills to calm [him]self and think more clearly. [He] also [has] learned to take the time to analyze [his] part in any frustrating situation or interaction with another person and make a plan to deal with it better in the future.” Romero stressed the importance of his sobriety and said he had not relapsed and “avoid[s] high risk situations by being involved in positive, healthy activities.” He outlined his accomplishments during outpatient treatment, such as serving as an art teacher for kids, working toward his GED and writing books on recovery. On June 27, 2008, the trial court set a hearing date of July 14, 2008 for Romero’s application and ordered submission of a progress report on Romero’s treatment.

A progress report dated July 10, 2008 recommended against restoration of sanity. “Mr. Romero continues to pose a danger to the health and safety of others due to a mental defect, disease, or disorder. Continued placement in his current treatment program . . . is recommended. We believe his level of risk can be managed on an outpatient basis, and that he does not pose a danger to others as long as he remains in this structured program.” “Mr. Romero has complied with the terms and conditions of his outpatient treatment, as is required of all our patients. . . . However, he has not adequately addressed the underlying traits which in the past have led to his abuse and dependence on alcohol. [¶] . . . Psychological testing indicates that Mr. Romero has an insufficient ability to adequately manage even ordinary levels of stress. In the past he used substances in a maladaptive effort to cope with strongly felt negative emotions. Because he has not developed effective and adaptive coping skills, Mr. Romero’s risk of relapse is significant. [¶] . . . He has not yet developed sufficient adaptive coping skills to manage stressful circumstances and negative emotions. . . . [¶] . . . It has been observed that he is highly susceptible to perceived disrespect where none may be intended. This is likely

caused by thinking errors that are difficult to address due to his resistance to critical thinking. He strives to present himself as virtuous and well-adjusted. His ability to examine himself in a critical light and modify his behavior accordingly is deficient. Thus, while he may be dissatisfied with his [current] commitment, he is likely to blame external sources rather than himself.”

On July 14, 2008, in Romero’s presence, after appointing counsel for Romero and considering the July 11, 2008 progress report, the trial court continued the hearing on the application to November 4, 2008, to give Romero time to work on integrating with his family and society, and requested a further progress report at that time.

According to a progress report dated October 15, 2008, a session with Romero on September 22, 2008 again addressed his failure to adhere to board and care rules. “The manager had reported that Mr. Romero became defensive and spoke to staff in a disrespectful manner when they buzzed his room to conduct room checks in the evening. Apparently there was an issue with Mr. Romero not signing in and out, which he argued that he has been doing all along. He complained that staff was against him and failed to take responsibility for his own actions. He was reminded to be respectful to all employees, and that he is required to adhere to the curfew and sign-out requirements, as well as any other rules at the board and care. No further complaints have been received from the board and care since then. A continued focus of treatment is for Mr. Romero to work through his issues of pride, his resistance with adherence to guidelines, difficulty with authority figures and living at a residence that has restrictions.” Romero “requires and utilizes the support, supervision, and resources of his treatment program to maintain his psychiatric and behavioral stability as well as his sobriety. It is recommended that Mr. Romero’s outpatient status at [his current program] should be renewed for an additional year.”

At the November 4, 2008 hearing, at which Romero was present and represented by counsel, the trial court, after reviewing the October 15, 2008 progress report, ordered Romero to remain in his current outpatient treatment program, requested an updated

progress report and set a hearing for January 30, 2009. No action was taken on Romero's application to restore sanity.

A progress report dated January 19, 2009 indicated that "[o]ne area of concern was Mr. Romero's repeated demands to have more freedom, specifically by having more time away from the program. However, he has only been with the program a short while and has not demonstrated a consistent respect for the rules and an ability to appropriately monitor his activities and to keep the program informed. Another area of concern was his demands to have his curfew extended despite being chronically late for his existing curfew. Mr. Romero struggles with being responsible for his actions and understanding how being appropriate and following the rules will lead to more privileges, not the other way around. Mr. Romero repeatedly requests to be granted independent living, yet has not demonstrated that he can follow the rules at his board and care and be responsible for his behaviors and decisions. Treatment focuses on encouraging Mr. Romero to take responsibility for his actions. Time is also spent making collateral contacts with various members of his support network including his sponsor. Mr. Romero was recently transferred to a new therapy group that it is hoped will be more challenging for him. [¶] During a session held with Mr. Romero on December 31, 2008, the same issue regarding curfew violations had to be addressed again. The manager from Mr. Romero's board and care reported that he had been arriving up to half an hour late for curfew throughout the week. When his therapist addressed this with him, Mr. Romero argued that if his curfew were pushed back then he would not be late any more. He expressed feelings that his therapist was not helping him when his request was denied." The report recommended Romero's continued participation in the program.

At the January 30, 2009 hearing, at which Romero was present and represented by counsel, the trial court, after reviewing the January 19, 2009 progress report, set a hearing for April 30, 2009 and ordered a new progress report at that time. Again, no action was taken on Romero's application to restore sanity.

The next report, dated April 17, 2009, stated that "Mr. Romero has had to address struggles he has experienced with adherence to board and care rules, specific to curfew

violations and personality conflicts with board and care staff. In February, 2009, board and care staff observed Mr. Romero leaving the premises after 11:00 pm. There was no evidence to substantiate that Mr. Romero had left, since a room check was not conducted and Mr. Romero denied having left his residence that evening. There have not been any further incidents of curfew violations reported by board and care staff since the February incident. [¶] . . . [¶] . . . [¶] An ongoing treatment goal is to continue to encourage Mr. Romero to take responsibility for his actions and to think clearly through situations where he perceives that he is being disrespected. He needs to continue to improve on examining himself in a critical light and to modify his behavior accordingly. Time will also continue to be spent making collateral contacts with various members of his support network including his sponsor to monitor his progress.” The report recommended that Romero remain in his current treatment program.

At the April 30, 2009 hearing, at which Romero was present and represented by counsel, the court, after reviewing the April 17, 2009 progress report, set a hearing for August 13, 2009 and requested an updated progress report for that hearing. Once again, no action was taken on Romero’s application to restore sanity.

3. *Romero’s Arrest and the Outpatient Treatment Program’s Request to Revoke Outpatient Status*

A progress report dated July 27, 2009 stated, “On Tuesday, July 14, 2009, a phone call was received from Mr. Romero’s board and care indicating that he had missed curfew the previous night. Mr. Romero was normally granted weekend passes to visit a family friend who lives in San Bernardino and would leave on Saturdays and return Sunday night. Therefore, his absence was not noted until he failed to show up at his residence on Monday. During this call the Board and Care Manager noted that Mr. Romero was receiving solicitations from defense attorneys. After making a variety of phone calls, Mr. Romero’s therapist discovered that [he] had been arrested [on] July 11, 2009” for domestic battery in violation of section 243, subdivision (e)(1). In addition to reiterating Romero’s “difficulty interacting with authority figures such as members from his treatment team or staff from his board and care” and complying with

curfew requirements, the report detailed the circumstances of Romero's arrest. Although Romero was granted weekend passes to spend time with family friends who lived in San Bernardino County, he was in Los Angeles on the evening of July 11, 2009.

"[T]wo bystanders observed Mr. Romero and a female arguing in a car. Witnesses heard screaming and saw Mr. Romero grab her from behind the head and slam her head on the steering wheel. He then proceeded to grab her by the arms and repeatedly shook her back and forth. Witnesses contacted the police and, according to the police report, when officers approached the vehicle, Mr. Romero appeared agitated, was yelling at the female, and looked like he was getting ready to strike her. When questioned by police, the female stated she had been dating Mr. Romero for the previous six months." "It is also noteworthy that upon review of Mr. Romero's belongings, there was expensive electronic equipment found." Because Romero was unable to work and financially supported by the treatment program, "[t]his calls into question where he was getting the money for the electronic equipment, whether he was engaging in illegal activity, and whether he was withholding alternate sources of income from his treatment team."

Romero "failed to notify the program of his police contact or incarceration[,] which is also a violation of his Terms and Conditions of outpatient treatment." He "has demonstrated his unwillingness to participate in treatment and to work with the program. He violated his terms and conditions of outpatient treatment by misrepresenting his whereabouts, not divulging information about his romantic interest, violating curfew and re-offending by committing another crime. Mr. Romero has a history of domestic violence and became psychotic under the influence of alcohol when he carjacked a taxi during his instant offense." "Mr. Romero represents a risk of dangerousness to others that could not be safely managed in a community outpatient setting." As a result, after Romero was arraigned on July 14, 2009, he was removed from outpatient treatment and readmitted to a state hospital.

On August 11, 2009, the outpatient treatment program filed a report and a request for revocation of Romero's outpatient status pursuant to section 1608. On October 16, 2009, Romero, represented by counsel, filed a motion for jury trial, arguing that he was

entitled to a jury trial “to determine if revocation of [his] outpatient status is appropriate.” The District Attorney’s Office opposed Romero’s request, contending that he had no right to a jury trial to determine revocation of outpatient status pursuant to section 1608.

4. *The Trial Court’s Rulings*

On October 22, 2009, the trial court denied Romero’s request for a jury trial on the request to revoke outpatient status. It held an evidentiary hearing on the request to revoke outpatient status on November 5 and 19, 2009.

In support of the request to revoke outpatient status, Maria Vargas, a primary outpatient therapist who had worked with Romero for the year of 2007 and then from July 2008 forward, testified that Romero “wasn’t fully cooperative” and “was a little resistant towards treatment. He felt that the program was really invasive. . . . And he just really had a problem with taking responsibility and following rules and getting along with authority figures.” For example, Romero objected to room checks and random searches and had problems complying with his curfew. Romero failed to inform Vargas or any other hospital staff of his arrest on July 11, 2009 and did not provide notice that he would be in Los Angeles or that the victim of the allegations against him was his girlfriend, all in violation of the rules of his treatment program. He also had expensive electronic equipment in his belongings, which he would not have been able to afford with the funds provided to him by the program for support. Vargas reviewed the police report of the July 11, 2009 incident, which indicated that two witnesses had seen Romero hit the victim’s head against the steering wheel of the car. According to Vargas, Romero would be “better off” at the state hospital “because of his difficulties with the terms and conditions of outpatient treatment. He struggled with it a lot. He needs to be fully compliant. He needs to . . . fully disclos[e], [be] honest, forthcoming. He needs to deal with his issues with authority figures, and if he can’t do that straight out then we can’t treat him in the community safely and trust him. We can’t trust that we can treat him safely and keep the community safe.” Based on the July 11, 2009 incident, and a prior conviction for domestic violence, “[i]t’s a huge treatment concern definitely because he didn’t disclose the relationship and he got involved again and repeated an act that got him

involved with the law again. So it's definitely something that he needs to work out at [a state hospital]."

Harry Palmer, the assistant program director at Romero's outpatient treatment program, testified that he had supervised Vargas when she worked with Romero in 2007 and then worked directly with Romero as a treating clinician from February to July 2008 when Vargas was on a leave of absence. Since Romero entered the program, he "has essentially resisted supervision. He has maintained that he does not need the supervision He maintains he does not have a mental illness, and he has resisted the conditions that we have imposed on him for monitoring and supervising his activities in the community. It's very difficult for him to comply with some of the rules[,] which are applicable to all of our clients." Palmer believed that Romero "would be better treated under the structure and supervision that he would receive at a . . . state hospital." Palmer said that his opinion would not change, even assuming the July 11, 2009 incident had not occurred.

In Romero's defense, Nancy Rodriguez, the alleged victim of the July 11, 2009 incident, testified that she and Romero were friends and did not have a romantic relationship. Romero did not assault, threaten or do anything violent toward her, including forcing her head into the steering wheel of the car. On July 11, 2009 she had a panic attack, and Romero "was trying to help [her]." She "was yelling because [she] was trying to hit the glass [of the car] with [her] hands." Romero did nothing to cause her to have a panic attack. Rodriguez denied telling the police that she and Romero had been dating for six months and did not hurt her face when having the panic attack, but had been crying a lot and her eyes were swollen.

Romero testified that he did not have a romantic relationship with Rodriguez. He did not hit her head into a car steering wheel, and her face was not injured on July 11, 2009. He cooperated in his outpatient treatment program and did not resist therapy or violate rules.

In rebuttal, Los Angeles Police Department Officer Donald Casper testified that he had received a 911 call that brought him to Romero and Rodriguez on July 11, 2009.

During his investigation of the incident Rodriguez told him that she had been dating Romero for approximately six months. Officer Casper observed “redness and swelling to [Rodriguez’s] right cheek.” The injury appeared to be from an assault, not because of tears or crying. Rodriguez did not seem in a panic, but was reserved, nervous and fearful. One witness told Officer Casper that Romero had pushed the back of Rodriguez’s head into the steering wheel, and another witness reported to the officer that Romero had yelled at Rodriguez, held her and shook her by the arms.

The trial court concluded that Romero no longer was amenable to treatment at the community level and revoked his outpatient status, ordering completion of commitment at a state hospital. Romero filed a notice of appeal.

DISCUSSION

1. *The Trial Court Did Not Lack Jurisdiction to Rule on the Request to Revoke Outpatient Status*

Romero contends the trial court lacked jurisdiction to rule on the request to revoke his outpatient status because it did not first afford him a jury trial on his earlier application to restore sanity after he had completed one year of outpatient status. We disagree.

In the case of an application to restore sanity, “[t]he court shall hold a hearing to determine whether the person applying for restoration of sanity would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. If the court at the hearing determines the applicant will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community, the court shall order the applicant placed with an appropriate forensic conditional release program for one year. . . . The court shall retain jurisdiction. The court at the end of the one year[] shall have a trial to determine if sanity has been restored, which means the applicant is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder.” (§ 1026.2. subd. (e).) An applicant is entitled to a jury trial on the question

of restoration of sanity. (*People v. Tilbury* (1991) 54 Cal.3d 56, 68; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1433-1434.)

The one-year time limit in section 1026.2, subdivision (e), however, is directory, not mandatory, and, even if a hearing does not take place after the one-year period ends, the trial court retains jurisdiction to rule on a request for revocation of outpatient status. (*People v. Smith* (1990) 224 Cal.App.3d 1389, 1391-1392, 1395-1396 [after applicant had been in outpatient treatment for 15 months, trial court could revoke outpatient status despite failure to hold a hearing as specified in § 1026.2, subd. (e)].) Romero thus can renew his application for a jury trial on restoration of sanity, or request that the trial court hold a jury trial on the pending application, but the pendency of the application did not preclude the court from ruling on the request to revoke outpatient status.³

2. *The Trial Court Did Not Commit Prejudicial Evidentiary Error at the Hearing on the Request to Revoke Outpatient Status*

Romero contends the order revoking his outpatient status should be reversed because the trial court relied on inadmissible hearsay evidence and improperly restricted his testimony. Again, we disagree.

³ Romero contends *People v. Smith*, *supra*, 224 Cal.App.3d 1389 should not be applied because, unlike in his case, the defendant there did not request a jury trial after spending more than a year in outpatient treatment. This factual distinction, however, is not controlling. Section 1026.2, subdivision (e), states that, after an applicant has been in outpatient treatment for one year, the trial court “shall have a trial to determine if sanity has been restored” The requirement for a trial thus does not depend on whether the applicant requests one, and the conclusion that the statute is directory, not mandatory, allowing the trial court to proceed on a request to revoke outpatient status, applies even when an applicant has requested a jury trial on restoration of sanity. In addition, although Romero requested a jury trial on the request to revoke outpatient status, section 1608 does not afford him that right. (§ 1608 [after request for revocation of outpatient status by a treatment supervisor, “court” shall hold a hearing and either approve or disapprove the request]; see *People v. DeGuzman* (1995) 33 Cal.App.4th 414, 419-420 [“If the outpatient community program director requests revocation of outpatient status under section 1608, the court must hold a de novo hearing” at which it determines whether by a preponderance of the evidence “the patient needs extended inpatient treatment or refuses to accept further outpatient treatment”].)

Romero maintains that Vargas and Officer Casper related improper hearsay evidence through their testimony on which the trial court relied to revoke his outpatient status. Romero complains about Vargas's opinion testimony regarding his treatment needs based in part on reports from workers at his treatment program and statements from Romero's family friends that he and Rodriguez were dating. He also complains about Officer Casper's opinion testimony regarding the July 11, 2009 incident based in part on reports from witnesses who had seen Romero physically abuse Rodriguez.

A lay witness may testify to his or her opinion when rationally based on the perception of the witness and helpful to a clear understanding of his or her testimony. (Evid. Code, § 800.) An expert witness may base his or her opinion on matter perceived by or personally known to the witness or made known to him at or before the hearing. (Evid. Code, § 801, subd. (b).) A witness giving his or her opinion may state the reasons for the opinion and the matter upon which it is based. (Evid. Code, § 802.) Under these rules, Romero's complaints lack merit.

In re McPherson (1985) 176 Cal.App.3d 332 on which Romero relies is distinguishable. In that case, the appellate court reversed an order revoking outpatient status because the trial court had failed to conduct a de novo hearing to determine whether the defendant required extended inpatient treatment or refused to accept further outpatient treatment and supervision, as required by section 1608. (*Id.* at pp. 340-342.) Instead, the trial court relied on the hearsay testimony of a doctor who had virtually no personal knowledge of the defendant's behavior and applied an abuse of discretion standard to the opinion regarding the defendant's treatment needs of the outpatient supervisor, who also had not interacted with the defendant. (*Ibid.*) Here, in contrast, both Vargas and Palmer spent considerable time interacting and working with and evaluating Romero personally. Both were directly familiar with his behavior issues. In fact, the progress reports requested and reviewed by the trial court while Romero was in the outpatient treatment program included all of the incidents about which Vargas and Palmer testified, and Palmer signed two of Romero's progress reports, while Vargas signed four of them. Unlike in *In re McPherson*, the trial court reviewed the evidence to

make an independent determination regarding Romero's treatment needs. Thus, contrary to Romero's claim, *In re McPherson* does not support reversal of the order revoking his outpatient status.

Romero also complains that the trial court improperly sustained a relevancy objection to his counsel's question to him on direct examination, "Now if you were permitted to remain on independent living and not sent back to [state hospital] would you cooperate with the facility and do what they ask you to do?" Assuming Romero would have answered that he would cooperate with the facility and do what was asked of him if allowed to remain on outpatient status, it is not reasonably probable that such an answer would have led the trial court to deny the request to revoke Romero's outpatient status. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Indeed, Romero testified that he had cooperated in his outpatient treatment program and had not resisted therapy or violated the rules. He also denied hitting Rodriguez on July 11, 2009. His own self-serving statement that he would follow the rules if allowed to remain on outpatient status would not have made a difference in the outcome of the proceedings.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.